Supreme Court, U.S.
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No. 95-1116

IN THE

Supreme Court of the United States

October Term, 1995

MARGARET T. IRVING

Petitioner,

v.

DISTRICT OF COLUMBIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Leonard C. Collins #35717
LOEWINGER & BRAND, PLLC
471 H Street, N.W.
Washington, .C. 20001
(202) 789-2382

Counsel for Respondent
James Moshovitis

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QUESTIONS PRESENTED

1. Should this Honorable Court exercise its discretionary jurisdiction and grant petitioner a writ of certiorari absent a showing by the petitioner of extraordinary and compelling reasons therefor?

2. Does the filing of a tax sale report as required by D.C. Code § 47-1307 with the District of Columbia Recorder of Deeds, the repository of all the land records of the District of Columbia, constitute notice for purposes of determining whether the requirements of due process are fulfilled?

3. May a petitioner claim that her constitutional rights to due process are violated where any detriment petitioner suffered as a result of her reliance on an alleged misrepresentation by a government agency was remedied by the provisions of a settlement agreement the terms of which petitioner settled her claim to funds expended by her in attempting to untimely redeem real property lawfully sold at a tax sale?

PARTIES TO THE PROCEEDING IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MARGARET T. IRVING, APPELLANT
DISTRICT OF COLUMBIA, APPELLEE
VERNA C. ROBINSON, APPELLEE
JAMES H. MOSHOVITIS, APPELLEE

Verna C. Robinson was the sole individual appellee when the case was docketed in the District of Columbia Court of Appeals on September 20, 1993. By order filed September 12, 1994, reproduced herein at A12, the Clerk was ordered to "substitute James H. Moshovitis on the docket in place of Verna C. Robinson, as a party appellee."

There were no corporate parties to the proceeding in the Court of Appeals.

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Basis for jurisdiction in this Court

The judgment sought to be reviewed was entered October 16, 1995. The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257.

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

RESPONDENT'S SUPPLEMENT TO PETITIONER'S STATEMENT OF THE CASE

While respondents do not substantially disagree with the Statement of the Case as set forth by the petitioner, pursuant to Supreme Court Rule 15, respondents wish to supplement the petitioner's Statement of the Case with the addition of the following facts.

First, the opinion of the District of Columbia Court of Appeals points out on page A4 of petitioner's brief in support of Petition for a Writ of Certiorari that the parties to this litigation agreed on a settlement contingent upon the outcome of the appeal in this case and final judgment by the District of Columbia Court of Appeals. Petition for Writ of Certiorari Brief at A4 and A25.

The terms of the settlement were that if the final judgment in this litigation was adverse to the petitioner, respondents would repay to the petitioner $11,403.82, the sum which the petitioner had paid to the government of the District of Columbia ("District"); and if the final ruling was in favor of the petitioner, the petitioner would pay to the respondents $6,156.76, the sum which the respondents had paid to the District on September 28, 1990 in order to receive a tax deed from the 1986 tax sale. *See* Petition for Writ of Certiorari Brief at A25. In addition, the settlement provided that both sides would honor the lease with the tenant occupying the subject property. *Id.* The lease required the tenant to maintain the property and to pay all taxes and keep the subject property insured.*Id.*

Second, the petitioner in the trial court first challenged the tax sale on the grounds that the District's filing of the tax report of the 1986 tax sale, which is required under D.C. Code section 47-1307, was made too late in the day though it was filed on the 20th day pursuant to D.C. law. The petitioner abandoned this argument in the District of Columbia Court of Appeals.

Third, after the two-year redemption period expired in 1988, the respondents protected their interest in the subject property in two ways. First, the respondents applied for a tax deed on the subject property by surrendering to the District the tax sale certificate they had received subsequent to the 1986 tax sale, along with the money to pay the outstanding taxes, penalties, and interest. *See* D.C. Code § 47-1304(a) (1981, as amended). However, because of a large administrative backlog in the District Department of Finance, the respondents had not yet received a deed to the property by the time the instant action had begun in 1992. *See* Court of Appeal Judgment and Opinion reproduced in its entirety in Petition for Writ

of Certiorari Brief at p. A2-3. In the meantime, the respondents continued to bid on the subject property at the subsequent 1988 and 1989 tax sales and paid some of the taxes on the property as they became due. *Id.; see also* A25 of the Petition for Writ for Certiorari Brief. Thus, respondents did everything in their power to obtain a tax deed once the redemption period expired.

ARGUMENT

I. This Court should not exercise its discretional jurisdiction over this matter because it does not involve an important and compelling question of *constitutional law.*

Title 28, section 1257 of the United States Code provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties of the or statutes of or any commission held or authority exercised under the United States.
>
> (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U.S.C. § 1257.

In accord with 28 U.S.C. § 1257, Supreme Court Rule 10 provides in pertinent part:

> **Considerations Governing Review on Writ of Certiorari**
>
> 1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted **only** when there are **special and important reasons therefor...**
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court of a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court. . .

Rule 10. [emphasis supplied].

Writ of certiorari should be denied in the instant case because this matter does not involve the validity of a United States treaty, any United States or state law, and does not involve any special or compelling reasons for review by this Honorable Court. Indeed, the only remotely related constitutional claim in this case is that somehow the petitioner was deprived of a property interest without due process of law. *See* Petition of Writ of Certiorari Brief at 10-11. As is set forth below, petitioner was not deprived of the subject property without due process, because petitioner as well as the petitioner's predecessor in title, were afforded adequate notice and an opportunity to redeem the subject property pursuant to District of Columbia law. Moreover, the parties to this action, with the

assistance of counsel, executed a settlement agreement the terms of which fully reimburse the petitioner for any losses she may have incurred in relying on an alleged misrepresentation of the District as to the status of the taxes on the subject property, which petitioner paid in unsuccessfully attempting to redeem the subject property after it had been sold at tax sale as a result of the failure of the original owner to pay real property taxes. As a result, petitioner's claim that she was misled to her detriment is not an issue in this case, and does not constitute a compelling reason or circumstance to grant a writ of certiorari in this case.

It is well settled law that the District of Columbia government ("District") is authorized by statute to sell real property for non-payment of property taxes. D.C.Code § 47-1304 (1981, as amended). Under D.C.Code section 47-1304, the District must sell all property for which taxes are in arrears to the highest bidder at public auction. Once the winning bid is paid, the Collector of Taxes must issue a certificate of sale. The owner of record may redeem the property within two years after the sale by paying the District the amount for which the property was sold. If the owner does not do so, the purchaser then has three more years in which to apply for a tax deed to the property. Once these conditions are met and the purchaser pays all taxes and penalties owed, "a deed shall be given by the Mayor . . . .to the purchaser at such tax sale . . . or to the assignee of such certificate [of sale]". D.C. Code § 47-1304(a).

It is also well settled law that the District must file with the Recorder of Deeds a report of sale of all real property sold at tax sale describing each property sold, the tax and penalty and other charges due, the name of the purchaser, the sale price, the date on which the property was sold, the costs of the sale involved, and the surplus bid for the property if any.

D.C. Title 47, § 1307 (1981, as amended). Further, in the case of *Frassetto v. Barry,* 497 A.2d 109 (D.C.App. 1985), the District of Columbia Court of Appeals held that the requirement of filing a report of sale was to give further and explicit notice to the citizen whose property had been included in the tax sale and who was about to lose their property as a result of delinquent real property taxes, to warn of the danger of the impending transfer of property and to give the property owner ample information as to what should be done in order to redeem the property from such a transfer. Accordingly, filing the tax sale report gives constructive notice to any and all interested persons of the tax sale.

In reaching its holding in *Frassetto,* the court of appeals stated that because:

> . . . the office of the Recorder of Deeds is the public repository for all land records and that Congress, in selecting that office as the filing situs, must accordingly have intended that the required recording of tax sale reports serve a public notice function . . . The District is required to file§ 47-1307 reports shortly after the tax sale is held, early in the period of redemption when the record owner retaines the right to avoid a final conveyance of his property by paying the delinquent tax bill. Such timely notice may be significant to the owner . . . , for in the event that-as alleged in this case-the owner failed to receive a mailed notice of delinquency and impending tax sale, or to see a tax sale advertised in a local newspaper, an inspection of the public record at the Recorder of Deeds office may be the only practical way, or at least the most certain way for the owner to learn that a tax sale has taken place and to redeem the property in time.

Frasetto, 497 A.2d at 113. Thus, it is clear that even in the absence of all other forms of notice, the filing of the tax sale report at the Recorder of Deeds, in accordance with D.C.Code section 47-1006, fulfills the notice requirement of due process.

Indeed, as the United States Court of Appeals for the District of Columbia Circuit stated in its decision in *Kann v. King*, 25 U.S.App.D.C. 182, __ F.2d __ (1905) *rev'd on other grounds*, 204 U.S. 43, 27 S.Ct. 213, 51 L.Ed. 360 (1907), the purpose of section 47-1006 is plain, it is ". . . to give further and explicit notice to the citizen whose property was affected and was about to be taken from him, to warn of the danger, and give ample information as what was required to be done in order that he might relieve his property from its predicament." *Id.*

In the instant case, petitioner argues that filing of the tax report is somehow distinguishable from recording documents related to the transfer of real property. Petition for Writ of Certiorari Brief at p. 11-12. For the reasons cited in both *Frassetto* and *King*, regardless of the type of recordation involved, the fact that the tax sale report and all its included information is available at the Recorder of Deeds suffices to fulfill notice requirements under due process. Therefore, the filing of the tax sale report gave petitioner constructive knowledge of the tax sale of the subject property to the respondents in January of 1986, and the petitioner's first argument that she did not have either actual or constructive notice of the tax sale fails.

Further, it is important to note that this argument was never raised in the appeal of this case, nor was the issue of the validity of the tax sale itself raised at any time despite the fact the petitioner had been given every opportunity to do so. Thus, the tax sale of the subject property to the respondents stands uncontested and therefore valid, and the petitioner cannot now claim that it should be invalidated because the requirements of

due process were not satisfied. Moreover, the petitioner as the personal representative and heir of the original owner has no more right to the subject property than that of the original owner, her son, the decedent Mr. Kyles.

Because the petitioner in effect, "stepped in to the shoes" of the original property owner, Mr. Kyles, upon his demise, and Mr. Kyles had lost all right to redeem the subject property after the respondents relinquished their tax certificate, applied for a tax deed and requested a corresponding balance to be paid as calculated by the District, there is no cognizable claim that can be made by the petitioner of an alleged failure on the part of the District to have properly conducted the tax sale and given adequate and proper notice of the tax sale to the original owner, Mr. Kyles. It follows that the decedent could not have had any interest in the property after the expiration of the period of redemption, and as a result, the petitioner had no interest to convey to herself as the heir of the original owner. *Malone v. Robinson*, 614 A.2d 33, 35, n.4 (D.C.App. 1992).

Because the respondents were the only persons with an interest in the subject property at the end of the redemption period and after the time the respondents applied for a tax deed, the petitioner's reliance on the Probate Reform Act is inapplicable. As the panel of three judges unanimously concurred in their ruling on this case, since the original owner no longer had an interest in the property after the redemption period expired in 1988, his estate could not acquire any interest in the property upon his death in 1989. As a result, there was no need for the respondents to make a claim against his estate under the Probate Reform Act.

However, even if this is an incorrect interpretation of the significance of the events which occurred and an incorrect application of the Probate Reform Act, petitioner cites no reason

why said act or its application violate federal or constitutional law or principles, nor has petitioner cited a split of authority among the state or circuit courts of appeal on this precise issue. Moreover, the petitioner has not stated any compelling reasons why this Court should grant a writ of certiorari. While petitioner clearly argues that the outcome of this case is unfair to her individually, she has not asserted how this matter affects the public at large on a constitutional level, nor has she included any evidence or statistics to support the contention that other property owners suffer under the law that governs tax sales within the District of Columbia. Accordingly, the petition for writ for certiorari should be denied.

Finally, the petitioner and respondent have settled her claim that she suffered a loss for which she has not been fully compensated. The parties, with the assistance of counsel, have executed a settlement agreement whereby the petitioner will be fully repaid for all monies she expended in attempting to save the subject property from tax sale. *See* Petition for Writ of Certiorari Brief at A25. Thus, the petitioner has been made whole and the status quo has been returned to that of the time before the petitioner was allegedly led by the District of Columbia to believe she held an interest in the subject property. As a result, petitioner has settled her claim of injury or deprivation of any right, title or interest that she otherwise held prior to her involvement in this matter as the original owner's personal representative and heir.

SUMMARY

Simply stated, this is a private matter where one party, petitioner, is now challenging a tax deed which was properly issued to respondent, whose interests were prior in time and priority to that of the petitioner. Petitioner received constructive notice of the tax sale of the subject property to the respondents

before she allegedly relied upon the representations of the District agency regarding the status of the real property taxes assessed against the subject property, and petitioner will be reimbursed for monies she expended in reliance on the District's representations pursuant to the terms of the settlement agreement executed by the parties. Petitioner has failed to show how this private dispute, the resolution of which was decided by summary judgment at the trial court level and unanimously affirmed by the District of Columbia Court of Appeals, involves important and compelling, constitutional or otherwise issues affecting the public at large. Accordingly, the respondents respectfully request that the petition for a writ of certiorari be denied.

CONCLUSION

For the foregoing reasons, the respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

Leonard C. Collins, #35717
Loewinger & Brand, PLLC
471 H Street, N.W.
Washington, D.C. 20001
(202) 789-2382

APPENDIX A

USCS

USCS§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(June 25, 1948, ch 646, § 1, 62 Stat. 929; July 29, 1970, P.L. 91-358, Title I, Part D, Subpart 2, § 172(a)(1), 84 Stat. 590; June 27, 1988, P.L. 100-352, § 3, 102 Stat. 662).

D.C. CODE

* * * * *

§ 47-1304. Same — Deposit required; certificate of sale; tax deed; redemption.

(a) The Collector of Taxes shall require from every purchaser of property sold as aforesaid a deposit sufficient, in his judgment, to guarantee a full and final settlement for such purchase. Every purchaser other than the District of Columbia at any sale of property as aforesaid shall pay the full amount of his bid, including surplus, if any, to the Collector of Taxes within 5 days after the last day of sale, and in case such payment is not made within the time specified the deposit of the person so failing to make payment shall be forfeited to the District of Columbia, and said Collector of Taxes shall then issue the certificate of sale for such property to the next highest bidder, and if payment of the amount of the bid of said next highest bidder be not made within 2 days thereafter, the Mayor of the District of Columbia shall set aside both sales for which the bids were made; and the said Collector of Taxes shall thereupon be held to have bid the amount due on the said lot and to have purchased it for the District. Immediately after the close of the sale, upon payment of the purchase money, the said Collector of Taxes shall issue to the purchaser a certificate of sale, and if the property be not redeemed by the owner or owners thereof within 2 years from the last day of sale, by payment to the Collector of Taxes of said District, for the use of the legal holder of the certificate, the amount for which it was sold at such sale, exclusive of surplus, and 1 per centum thereon for each month or part thereof, a deed shall be given by the Mayor of the District, or his successors in office, to the purchaser at such tax sale, his heirs or devisees, or to the assignee of such certificates, which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said

sale herein authorized: Provided, that no deed shall be issued unless application therefor be made within 5 years from the last day of sale, and if no such aplication be made then the owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the property by paying to the Collector of Taxes for the legal holder of the certificate the amount for which it was sold at such sale, exclusive of surplus, plus interest thereon for the first 2 years after the date of such certificate of sale at the rate hereinabove provided, and for 3 years thereafter at the rate of 6 per centum per annum; that when the said property is redeemed as aforesaid, the Collector of Taxes shall, within 5 days thereafter notify the owner of record such tax sale certificate at his last known address, by registered mail or by certified mail, of the redemption of such certificate; that within 5 years from the time that payment has been made to the Collector of Taxes to redeem such tax sale certificate, the owner thereof may apply for, and, upon the surrender of the certificate, shall receive from the District of Columbia the payment made as hereinbefore prescribed; that upon the failure of the owner of such tax sale certificate to apply within the period of 5 years, as hereinbefore prescribed, such money shall be forefeited to the District of Columbia, and be deposited by the Collector of Taxes in the Treasury of the United States to the credit of the general revenues of the District of Columbia: Provided, that no deed shall be issued until all taxes and assessment appearing upon the tax books against the property are paid, with penalties, interests, and costs, including taxes for the years for which the District purchased the property at tax sale: Provided, that no property advertised as aforesaid shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid on any property is not sufficient to meet the taxes, penalties, and costs thereon said property shall thereupon be bid off by the said Collector of Taxes, in the name of the District of Columbia;

but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property; and if within 2 years thereafter such property is not redeemed by the owner or owners thereof, or their legal representatives, by the payment of taxes, penalties and costs due at the time of the sale and that may have accrued after that date, and 1 per centum thereon for each month or part thereof, or if any property 2 years after having been so bid off at any sale in the name of said District under §§ 47-1301 to 47-1310 or any other law in force is not or has not been so redeemed as aforesaid (unless it shall be shown that the sale for taxes was irregular and void), then the Mayor of the District, or his successors, shall in the name of and on behalf of the District of Columbia, sell said property at public or private sale and issue to any purchaser of such property a deed, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale: Provided, however, that no deed shall be issued until all assessments, taxes, costs, and charges due the District, of whatsoever nature, shall have been paid in full: And provided also, that minors or other persons under legal disability be allowed 1 year after attaining full age or after the removal of such legal disability to redeem the property so sold or bid off by the Collector of Taxes in the name of the District of Columbia as aforesaid, from the purchaser or purchasers, his, her, or their assigns, or from the District of Columbia, on payment of the amount of purchase money so paid therefor, with 8 per centum per annum interest thereon as aforesaid, together with all taxes and assessments that have been paid thereon by the purchaser or his assigns between the day of sale and the period of redemption with 8 per centum per annum interest on the amount of such taxes and assessments. When such property is redeemed from a purchaser other than the District of Columbia, and when such property shall, be

redeemed from the District of Columbia, it shall, except as to the period of redemption, be upon the terms and conditions hereinabove provided for in the case of redemption by persons not under legal disability: Provided, however, that failure on the part of the District, from any cause whatsoever, to enforce the liens acquired aforesaid shall not release the property from any tax whatsoever that may be due the District: Provided further, that at any time after any property shall have been bid off as aforesaid by the Collector of Taxes, and before the expiration of the time allowed for the redemption thereof, the Collector of Taxes of said District, may issue to any person or persons, upon the payment of a sum not less than the aggregate amount of the taxes, penalties, and costs due at the time the property was bid off by the Collector and that may have accrued after that date, a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within 2 years from the date of such certificate, by payment to the Collector of Taxes of said District, for the use of the legal holder of the certificate, the amount exclusive of surplus paid by the person or persons to whom such certificate was issued and 1 percentum thereon for each month or part thereof, a deed shall be given by the Mayor of the District of Columbia, or his successors in office, to the legal holder of such certificate, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale; and that the foregoing provisions in this section in reference to the sale at public or private sale of property in the District of Columbia advertised for sale for taxes and bid off by the Collector of Taxes be, and the same are also hereby, made applicable to all property in the District of Columbia subject to taxation where taxes levied and in arrears on July 1, 1897, or at any time prior thereto, have not been paid, and which at any sale held previous to said date were bid off in the name of the District

of Columbia; and when for any reason any tax sale of real property in the District of Columbia may be set aside or cancelled, such property may be readvertised and sold at the next ensuing annual sale.

(b) * * * * * * *

(c) * * * * * * *

(Feb. 28, 1898, 30 Stat. 250, ch. 32, § 3; July 1, 1902, 32 Stat. 633, ch. 1358, § 1(3); June 25, 1938, 52 Stat. 1201, ch. 702 § 9; Feb. 22, 1944, 58 Stat. 20, ch. 29; June 11, 1960, 74 Stat. 203; Pub. L. 86-507, § 1(52); 1973 Ed., § 47-1003; Aug. 9, 1986, D.C. Law 6-135, § 14(a), 33 DCR 3771, Sep. 20, 1989, D.C. Law 8-31, § 5(a), 36 DCR 4750.)

* * * * *

§ 47-1307. Same — Report to be filed with Recorder of Deeds; disposition of surplus; redemption.

(a) The Collector of Taxes shall, within 20 days, exclusive of Sundays and legal holidays, after the last day of the sale hereinbefore provided for as aforesaid, file with the Recorder of Deeds a written report, in which he shall give a statement of the property sold, other than that sold to the District of COlumbia, to whom it was assessed, the taxes due, to whom sold, the amount paid, the date of sale, the cost thereof, and the surplus, if any. Any surplus remaining after the collection of taxes, penalties, and costs on any real estate shall be collected as hereinbefore provided for, and shall be deposited by the Collector of Taxes to the credit of the Surplus Fund, to be paid to the owner or owners, or their legal representatives, in the same manner as other payments made by the District: Provided, that if any property sold for taxes, as herein

provided, is redeemed from such sale within 2 years from last day of sale, any surplus paid at time of sale shall be paid by the District of Columbia to the legal holder of certificate of sale. * * * (Feb. 28, 1898, 30 Stat. 252, ch.32, §5; July 1, 1902, 32 Stat. 635, ch. 1358, §1(5); 1973 Ed., §47-1006.)